



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2012-0285; FRL-9905-08-Region 4]**

#### **Approval and Promulgation of Implementation Plans; Tennessee;**

#### **Conflict of Interest and Notice of Finding of Disapprovals**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and notice of disapproval.

**SUMMARY:** EPA is taking three actions pertaining to the infrastructure requirements of the Clean Air Act (CAA or Act) for the State of Tennessee. First, EPA is providing notice of its findings of disapproval for a sub-element of the Tennessee infrastructure state implementation plans (SIPs) for the 2008 Lead National Ambient Air Quality Standards (NAAQS), 1997 Annual Fine Particulate Matter (PM<sub>2.5</sub>) NAAQS, 2006 24-hour PM<sub>2.5</sub> NAAQS and 1997 8-hour ozone NAAQS. Specifically, EPA is providing notice of the disapproval of the previously conditionally-approved portion of the State board and conflict of interest requirements of the infrastructure SIPs for these NAAQS. These disapprovals were triggered automatically on July 23, 2013, when Tennessee failed to submit revisions to address the CAA State board and conflict of interest requirements within the timeframes specified in EPA's conditional approval actions. Second, EPA is proposing to approve the SIP revision submitted by Tennessee, through the Tennessee Department of Environment and Conservation (TDEC) on October 9, 2013, as meeting the applicable requirements of the Act. This SIP revision addresses Tennessee's outstanding obligations related to the CAA State board and conflict of interest requirements.

Finally, EPA is proposing to approve the infrastructure SIP sub-element related to the State board and conflict of interest requirements for the 2008 Lead, 1997 annual PM<sub>2.5</sub>, 2006 24-hour PM<sub>2.5</sub>, and 1997 8-hour ozone NAAQS. Approval of these infrastructure SIP requirements for the listed NAAQS would result in the disapprovals noticed above for this sub-element being converted to approvals. Final approval of these infrastructure SIP sub-elements, however, is contingent upon final approval of the underlying October 9, 2013, SIP revision to address the CAA requirements also proposed through this action. EPA notes that all other applicable Tennessee infrastructure elements for the 2008 Lead, 1997 annual PM<sub>2.5</sub>, 2006 24-hour PM<sub>2.5</sub>, and 1997 8-hour ozone NAAQS have been addressed in separate rulemakings.

**DATES:** Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2012-0285, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [R4-RDS@epa.gov](mailto:R4-RDS@epa.gov).
3. Fax: (404) 562-9019.
4. Mail: "EPA-R04-OAR-2012-0285," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 am to 4:30 pm, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OAR-2012-0285. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

- I. Background**
- II. Section 110(a)(2)(E) Adequate Resources Requirements**
- III. Notice of Disapproval**
- IV. EPA's Analysis of Tennessee's Conflict of Interest Submission**
- V. EPA's Analysis Supporting the Proposed Approval of Sub-element 110(a)(2)(E)(ii)**

## **VI. Proposed Action**

## **VII. Statutory and Executive Order Reviews**

### **I. Background**

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS.

Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. On July 23, 2012 (77 FR 42997), August 2, 2012 (77 FR 45958), and June 18, 2013 (78 FR 36440), EPA approved in part, and conditionally approved in part, Tennessee’s infrastructure SIPs for the 1997 8-hour ozone NAAQS, 1997 annual PM<sub>2.5</sub> NAAQS, 2006 24-hour PM<sub>2.5</sub> NAAQS and 2008 Lead NAAQS respectively.

### **II. Section 110(a)(2)(E) Adequate Resources Requirements**

EPA conditionally approved a portion of the Tennessee infrastructure SIP submissions addressing the 1997 8-hour ozone NAAQS, 1997 annual PM<sub>2.5</sub> NAAQS, 2006 24-hour PM<sub>2.5</sub> NAAQS and 2008 Lead NAAQS. Specifically, EPA conditionally approved the portion of

section 110(a)(2)(E)(ii) respecting Act's section 128(a)(1) requirements (hereafter "sub-element 110(a)(2)(E)(ii)") for each of the above NAAQS. Sub-element 110(a)(2)(E)(ii) provides that each infrastructure SIP shall provide requirements "that the State comply with the requirements respecting State board under section [128 of the CAA]...." Section 128 in turn provides that each SIP shall contain requirements that: 1) any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to permits or enforcement orders under the Act (hereafter "section 128(a)(1) requirements"); and, 2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed (hereafter "section 128(a)(2) requirements.") EPA was unable to fully-approve Tennessee's infrastructure submissions for the above NAAQS with respect to sub-element 110(a)(2)(E)(ii) because, at the time, the SIP did not include provisions to address the section 128(a)(1) requirements.<sup>1</sup>

On, March 28, 2012, TDEC transmitted a letter to EPA, committing to adopt specific enforceable measures into its SIP by July 23, 2013, to address the applicable portions of section 128(a)(1). In Tennessee's March 28, 2012, letter, TDEC committed to bring its SIP into conformity with section 128(a)(1) of the CAA by submitting a SIP revision that designated at least a majority of the positions on the State's Air Pollution Control Board<sup>2</sup> as being subject to the "public interest" requirement. In addition, TDEC committed to submitting a SIP revision establishing requirements to ensure that at least a majority of the members on the State's Air

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<sup>1</sup> The section 128(a)(2) conflict of interest disclosure requirements, however, were met by existing provisions in the Tennessee SIP. *See* 77 FR 42997, page 42998; 77 FR 45958, 45960; and 78 FR 36440, 36442.

<sup>2</sup> The composition of Tennessee's Air Pollution Control Board is statutorily prescribed at Tennessee Code Annotated 68-201-104.

Pollution Control Board do not derive any significant portion of their income from persons subject to CAA permits or enforcement orders. TDEC also described in the letter that its planned restrictions related to the “significant portion of income” requirement of section 128 would include an exclusion for the official salaries of mayors of counties and municipalities, and for faculty members employed by institutions of higher learning.

### **III. Notice of Disapproval**

EPA’s conditional approval authority is provided at section 110(k)(4) of the CAA. Consistent with the requirements for EPA’s exercise of the conditional approval authority, the commitment from Tennessee provided that the State would adopt the specified enforceable provisions and submit a revision to EPA for approval within one year of final action of the conditional approval.<sup>3</sup> As described at section 110(k)(4), and as noted by EPA in its conditional approval actions, failure by the State to adopt the specified provisions and submit them to EPA for incorporation into the SIP by July 23, 2013, would result in the conditional approvals being treated as disapprovals. Tennessee failed to meet the July 23, 2013, commitment; therefore, the conditional approvals automatically became disapprovals on that date.

EPA was not required to propose a finding of disapproval in order for the conditional approvals to convert to disapprovals. However, the Agency is hereby notifying the public of the finding of disapprovals for Tennessee’s 2008 Lead NAAQS, 1997 annual PM<sub>2.5</sub> NAAQS, 2006 24-hour PM<sub>2.5</sub> NAAQS and 1997 8-hour ozone NAAQS infrastructure SIPs as they relate to the sub-element 110(a)(2)(E)(ii) requirements respecting section 128(a)(1) requirements.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a

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<sup>3</sup> EPA’s initial final action to conditionally approve sub-element 110(a)(2)(E)(ii) occurred on July 23, 2012. Therefore, Tennessee’s commitment to submit the specific enforceable measures necessary to comply with section 128(a)(1) requirements was due no later than July 23, 2013. *See* 77 FR 42997.

requirement of a Part D Plan (42 U.S.C. sections 7501-7515) or is required in response to a finding of substantial inadequacy as described in section 7410(k)(5) (SIP call) starts a sanctions clock. Sub-element 110(a)(2)(E)(ii) requirements are not submitted pursuant to Part D requirements, and therefore, no sanctions will be triggered by Tennessee's failure to submit SIP revisions for these requirements. The disapprovals do however trigger the requirement under section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP.

In this rulemaking, EPA is also proposing to approve Tennessee's October 9, 2013, SIP revision to address the section 128(a)(1) CAA requirements. Provided that EPA finalizes approval of TDEC's October 9, 2013, SIP revision, on or before July 23, 2015 (two years from the date Tennessee's sub-element 110(a)(2)(E)(ii) conditional approvals converted to disapprovals), Tennessee will have corrected the infrastructure SIP deficiencies and a FIP for sub-element 110(a)(2)(E)(ii) will not be necessary.

As stated above, this notice of disapproval is limited to the section 128(a)(1) requirements and the associated sub-element 110(a)(2)(E)(ii) requirements of Tennessee's infrastructure SIPs for the 2008 Lead NAAQS, 1997 annual PM<sub>2.5</sub> NAAQS, 2006 24-hour PM<sub>2.5</sub> NAAQS and 1997 8-hour ozone NAAQS. All other applicable aspects of these infrastructure SIPs have been addressed in separate rulemakings. *See* July 23, 2012 (77 FR 42997), August 2, 2012 (77 FR 45958), and June 18, 2013 (78 FR 36440).

#### **IV. EPA's Analysis of Tennessee's Conflict of Interest Submission**



TDEC's October 9, 2013, SIP revision repeals Chapter 1200-3-17 moving the contents to a new Chapter 0400-30-17 - *Conflict of Interest*, and adds a new section 0400-30-17-.02 *Protecting the Public Interests* and 0400-30-17-.05 *Policy of Ethics and the Avoidance of Conflicts of Interest*. EPA is proposing to approve this change because the Agency has preliminarily determined that, once approved into the Tennessee SIP, this change will address the section 128(a)(1) requirements that any board or body which approves permits or enforcement orders have at least a majority of members who represent the public interest and not derive a significant portion of their income from persons subject to permits or enforcement orders under the Act. As noted above, TDEC submitted the October 9, 2013, SIP revision to meet the requirements outlined in EPA's conditional approvals published on July 23, 2012 (77 FR 42997), August 2, 2012 (77 FR 45958), and June 18, 2013 (78 FR 36440), for the 1997 8-hour ozone NAAQS, 1997 annual PM<sub>2.5</sub> NAAQS, 2006 24-hour PM<sub>2.5</sub> NAAQS and the 2008 Lead NAAQS respectively.

Specifically, TDEC's revision would incorporate a new rule into its SIP to address section 128(a)(1) requirements. Rule 0400-30-17-.02 *Protecting the Public Interests* contains definitions and requirements that will enable to Board to clearly determine if it has a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to permits or enforcement orders under the Act. The intent of rule 0400-30-17-.02 is to ensure that at least half of the Board serves in the public interest and does not derive significant income from person subject to permits or enforcement orders under the Act. Pursuant to these provisions, in the event the Tennessee Air Pollution Control Board is unable to determine that it is comprised consistent with the requirements of section 128(a)(1), the

revisions prevent the Board from hearing contested cases until such time as it complies with the requirements of section 128.

TDEC is also revising sections 0400-30-17-.01 *Purpose and Intent* (formally 1200-3-17-.01), 0400-30-17-.03 *Conflict of Interest on the Part of the Board and Technical Secretary* (formally 1200-3-17-.02) and 0400-30-17-.04 *Conflict of Interest in the Permitting of Municipal Solid Waste* (formally 1200-3-17-.03) of the SIP and adding two new sections to address protecting the public interest and conflict of interest ( 0400-30-17-.02 *Protecting the Public Interests* and 0400-30-17-.05 *Policy of Ethics and the Avoidance of Conflicts of Interest*). EPA has preliminarily determined that these revisions, once approved into the SIP, will be sufficient to meet the State's obligations pursuant to the requirements of CAA section 128(a)(1).

#### **V. EPA's Analysis Supporting the Proposed Approval of Sub-element 110(a)(2)(E)(ii)**

Sub-element 110(a)(2)(E)(ii) requires that the state comply with the requirements respecting State Boards pursuant to section 128 of the Act. With respect to sub-element 110(a)(2)(E)(ii), EPA reviews infrastructure SIP submissions to ensure that the SIP includes SIP-approved provisions satisfying section 128 requirements. As previously discussed, Tennessee's SIP includes provisions respecting the section 110(a)(2) requirements, and following approval of the October 9, 2013, SIP revision to address section 128(a)(1) requirements, would fully meet the applicable section 128 requirements for the State.

Accordingly, EPA is hereby proposing to approve sub-element 110(a)(2)(E)(ii) with respect to the applicable section 128(a)(1) requirements for the 2008 Lead NAAQS, 1997 annual PM<sub>2.5</sub> NAAQS, 2006 24-hour PM<sub>2.5</sub> NAAQS and 1997 8-hour ozone NAAQS. Final action to approve this infrastructure SIP sub-element for the above NAAQS is contingent upon approval

of the October 9, 2013, SIP revision into the Tennessee SIP. Should that approval be finalized, EPA anticipates finalizing the sub-element 110(a)(2)(E)(ii) approvals concurrently through the same approval notice.

## **VI. Proposed Action**

EPA is notifying the public of findings of disapprovals for Tennessee's 2008 Lead NAAQS, 1997 annual PM<sub>2.5</sub> NAAQS, 2006 24-hour PM<sub>2.5</sub> NAAQS and 1997 8-hour ozone NAAQS infrastructure SIP sub-element 110(a)(2)(E)(ii) requirements as they relate to section 128(a)(1) requirements. EPA conditionally approved this portion of Tennessee's infrastructure submissions for these NAAQS on July 23, 2012, August 2, 2013, and June 18, 2013. Tennessee failed to meet the July 23, 2013, submission deadline associated with these commitments, therefore, the conditional approvals automatically converted to disapprovals on that date. EPA is not required to propose a finding for these disapprovals; however, the Agency is providing the public with notice of these findings through this action. Provided EPA finalizes approval of the October 9, 2013, SIP revision to address the section 128(a)(1) requirements, the Agency intends to fully approve the section 110(a)(2)(E)(ii) sub-element of Tennessee's infrastructure SIP for the 2008 Lead NAAQS, 1997 annual PM<sub>2.5</sub> NAAQS, 2006 24-hour PM<sub>2.5</sub> NAAQS and 1997 8-hour ozone NAAQS, and thereby, convert the disapprovals noticed through this action into approvals.

As described above, EPA is also proposing to approve Tennessee's October 9, 2013, SIP revision, as addressing applicable CAA section 128(a)(1) requirements. Specifically, EPA is proposing to approve Tennessee's new Chapter 0400-30-17 *Conflict of Interest* which replaces Chapter 1200-03-17 in its entirety.

Finally, EPA is proposing to approve infrastructure SIP sub-element 110(a)(2)(E)(ii) as it relates to section 128(a)(1) requirements for purposes of the 2008 Lead NAAQS, 1997 annual PM<sub>2.5</sub> NAAQS, 2006 24-hour PM<sub>2.5</sub> NAAQS and 1997 8-hour ozone NAAQS in Tennessee. Final approval of the section 110(a)(2)(E)(ii) sub-element for these NAAQS is contingent upon approval of the section 128(a)(1) requirements SIP revision also proposed for approval through this action.

EPA notes that the subject of this notice is limited to the section 128(a)(1) requirements and the associated infrastructure SIP sub-element 110(a)(2)(E)(ii). All other applicable Tennessee infrastructure SIP elements for the 2008 Lead NAAQS, 1997 annual PM<sub>2.5</sub> NAAQS, 2006 24-hour PM<sub>2.5</sub> NAAQS and 1997 8-hour ozone NAAQS have been addressed in separate rulemakings.

## **VII. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 20, 2013.

A. Stanley Meiburg,

Acting Regional Administrator,

Region 4.